

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**February 9, 2022 at 9:00 a.m.**

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1.     **20-21508-E-13     LORI MICKENS     MOTION TO DISMISS CASE**  
          **DPC-4           Pro Se           12-22-21 [59]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 22, 2022. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<b>The Motion to Dismiss is <del>denied without prejudice</del>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1.       the debtor, Lori Denise Mickens ("Debtor"), is delinquent in plan payments.

**DISCUSSION**

**Delinquent**

Debtor is \$2,072.00 delinquent in plan payments, which represents multiple months of the \$850.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan

payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

~~Based on the foregoing, cause exists to dismiss this case.~~

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

2.     [19-20712-E-13](#)     **BRIDGETTE LONG**     **MOTION TO DISMISS CASE**  
          [DPC-1](#)           **Candace Brooks**       **12-22-21 [53]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2021. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is denied without prejudice.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1.       the debtor, Bridgette Marie Long (“Debtor”), is delinquent in plan payments.

## DEBTOR'S RESPONSE

Debtor filed a Response on January 18, 2022. Dckt. 58. Debtor states the delinquency will be cured prior to the hearing date. Declaration, Dckt. 59.

## DISCUSSION

### Delinquent

Debtor is \$1,924.00 delinquent in plan payments, which represents multiple months of the \$962.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

~~Based on the foregoing, cause exists to dismiss this case.~~

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2022. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted and the Bankruptcy Case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Fouad Afif Mizyed ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on January 3, 2022. Dckt. 81. Debtor states they are not able to make a lump sum payment of \$14,754.50 by the time of the hearing and will file a Motion to Modify their Chapter 13 Plan to resolve the delinquency. Response, Dckt. 81. There is no proof of service for Debtor's response and so it is not clear to the court if Trustee received notice of Debtor's response.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,587.46 delinquent in plan payments, which represents multiple months of the \$3,583.52 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **DEBTOR'S PENDING MODIFIED PLAN**

Debtor filed a Modified Plan on February 3, 2022. Dckt. 85. The hearing for confirmation of Debtor's Modified Plan is on April 19, 2022 at 2:00 p.m. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 82, 84.

The court's review of the Motion discloses that it does not state the grounds ( 11 U.S.C. §§ 1329, 1325, 1322) with particularity upon which the requested relief, confirmation of a modified plan, may be granted. Such failure could be grounds to grant the present motion and dismiss the case.

The court has addressed on multiple occasions the pleading requirements required by the U.S. Supreme Court in Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, 9014. The grounds stated in the present Motion to Confirm are:

- A. Debtor filed a voluntary Chapter 13 case;
- B. Debtor has a confirmed Chapter 13 Plan in this case;
- C. Debtor failed to increase his plan payments as required in the current Chapter 13 Plan;
- D. The Trustee has now filed a Motion to Dismiss the Chapter 13 case because Debtor is \$14,754.50 delinquent in Plan payments;
- E. Debtor has funded the Plan with \$72,768.50; and
- F. Debtor is filing a Modified Plan that increases plan payments to cure the post-petition defaults.

Motion to Confirm; Dckt. 82.

While providing the court with some summary information, the Debtor does not state what grounds under §§ 1329, 1325, 1322 are the grounds stated with particularity upon which the requested relief is based. The various sections having conflicting grounds upon which a modified plan is confirmed, depending upon what the terms of the modified plan are for which confirmation is requested.

In reviewing the Declaration (Dckt. 84), though Debtor states that he forgot to increase the payments as required under the confirmed Plan and there is a \$14,754.50 delinquency, Debtor does not advise the court, Trustee, and parties in interest where the \$14,754.50 in cash is. It would appear that Debtor could just take the extra cash and cure the default, rather than having paid part and spreading the balance over the life of the plan. Debtor shall provide a supplemental declaration and evidence of where the monies relating to the default are located, and if not available, on what those monies were expended.

Cause has been shown, the Motion to Dismiss is granted and the bankruptcy case is dismissed

The court shall issue one order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted and the Chapter 13 Case is dismissed.

4. [21-20022-E-13](#)      **STEPHANIE POWERS**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Peter Macaluso**      **12-22-21 [42]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Stephanie Ann Powers (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on January 25, 2022. Dckt. 46. Debtor states the delinquency will be cured on or prior to the hearing date.

## **DISCUSSION**

**Delinquent**

Debtor is \$595.00 delinquent in plan payments, which represents multiple months of the \$225.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2022. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Marvin Antonio Dominguez and Gina Marie Dominguez ("Debtor"), is delinquent in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 26, 2022. Dckt. 57. Debtor states they have partially cured the delinquency but are unable to cure the remaining delinquency prior to the hearing date and therefore will file a Modified Chapter 13 plan to cure arrears and resume ongoing monthly payments. Opposition, Dckt. 57. Debtor did not file a proof of service for their opposition.

#### **DEBTOR'S PENDING MODIFIED PLAN**

Debtor filed a First Modified Plan on January 26, 2022. Dckt. 62. The hearing for confirmation of Debtor's First Modified Plan is set for March 15, 2022 at 2:00 p.m. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 58, 60.

The Motion does not to comply with Federal Rule of Bankruptcy Procedure 9013 and does not state grounds with particularity for confirmation of a modified plan as required by 11 U.S.C. §§ 1329, 1325, 1322. The grounds stated in the Motion to Confirm (Dckt. 58) are:



- A. Debtor filed this bankruptcy case;
- B. Debtor has filed a First Modified Chapter 13 Plan;
- C. Debtor is delinquent \$9,221.55 under the Confirmed Chapter 13 Plan;
- D. Debtor will pay an additional amount to the Trustee;
- E. Debtor is filing Supplemental Schedules I and J;
- F. The Bankruptcy Code allows a debtor to modify a plan; and
- G. The legal conclusion that “Debtors’ modified plan meets the requirements set out in 11 U.S.C. §§ 1322(a), 1322(b), 1322(c), and 1325(a) for confirmation of chapter 13 plans.

Dckt. 58. While providing the court with Debtor’s legal conclusion, the Debtor does not state what grounds under §§ 1322(a), 1322(b), 1322(c), and 1325(a) are the grounds stated with particularity upon which the requested relief is based. The various sections having conflicting grounds upon which a modified plan is confirmed, depending upon what the terms of the modified plan are for which confirmation is requested.

The Motion to Confirm Modified Plan failing to state grounds with particularity upon which the court could confirm a modified plan, the Motion to Dismiss is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the Chapter 13 Case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2022. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, George Taylor Poppic and Nicole Patricia Poppic ("Debtors"), are delinquent in plan payments.

#### **DEBTORS' OPPOSITION**

Debtors filed an Opposition on January 26, 2022. Dckt. 98. Debtors state the delinquency will be cured prior to the hearing date.

#### **DEBTOR'S DECLARATION**

On February 2, 2022, Debtors filed a Declaration in support of their Opposition. Dckt. 99. Debtor states they shall be able to catch up entirely using money from selling puppies.

#### **DISCUSSION**

Debtors are \$3,000.00 delinquent in plan payments, which represents multiple months of the \$1,200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtors, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

7. [19-21951-E-13](#) **JASMINE SMITH** **MOTION TO DISMISS CASE**  
[DPC-5](#) **Scott Shumaker** **1-12-22 [125]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Jasmine Rae Smith (“Debtor”), is delinquent on plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on January 27, 2022. Dckt. 129. Debtor states the delinquency will be cured prior to the hearing date or Debtor will propose a confirmable modified plan prior to the

hearing date.

## **DISCUSSION**

Debtor is \$788.00 delinquent in plan payments, which represents multiple months of the \$394.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay or file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 23, 2021. The court computes that 48 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00, due on December 13, 2021.

**The Order to Show Cause is sustained, and the case is dismissed.**

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: Second Installment Payment in the amount of \$78.00 due by December 13, 2021 and Third Installment Payment in the amount of \$78.00 due by January 12, 2022.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 19, 2022. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00, due on January 12, 2022.

**The Order to Show Cause is sustained, and the case is dismissed.**

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: Second Installment Payment in the amount of \$78.00 due by December 13, 2021 and Third Installment Payment in the amount of \$78.00 due by January 12, 2022.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Michael Edward Nelson Kennedy ("Debtor"), is delinquent on plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 26, 2022. Dckt. 52. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

Debtor is \$3,583.41 delinquent in plan payments, which represents approximately one and a half months of the \$1,871.63 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

11.    [17-28058-E-13](#)        **RUSSELL SOMERVILL**                    **MOTION TO DISMISS CASE**  
         [DPC-1](#)                    **Seth Hanson**                                **1-12-22 [44]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted and the Bankruptcy Case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1.        the debtor, Russell Martin Somervill (“Debtor”), is delinquent on plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on January 25, 2022. Dckt. 48. Debtor states he sent a plan payment in the amount of \$1,775.00 on January 20, 2022. Debtor also states that they will file a modified plan prior to the hearing.



## FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 25, 2022 and January 26, 2022, respectively. Dckt. 51 and 55, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 57.

The Motion to Confirm does not state grounds with particularity, as required by Federal Rule of Bankruptcy Procedure 9013, upon which the court can grant the requested relief (confirmation of the First Modified Plan). The Motion to Confirm states the following grounds with particularity:

- A. Debtor filed bankruptcy on December 12, 2017;
- B. Debtor prepared a First Modified Plan to address the \$7,200 default in plan payments;
- C. Creditors with unsecured claims will receive a 100% dividend;
- D. The statement that the Bankruptcy Code allows a debtor to modify a plan;
- E. The legal conclusion that Debtor's modified plan complies with the requirements set forth in 11 U.S.C. §§ 1322(a) - (c) and 1325 for confirmation of a plan.

Dckt. 55.

Confirmation of a modified Chapter 13 Plan is provided for in 11 U.S.C. § 1329, which incorporates requirements of 11 U.S.C. §§ 1325 and 1322. The above "grounds" are not sufficient to confirm a modified Chapter 13 Plan when applied to the provisions of 11 U.S.C. §§ 1329, 1325, and 1322. Additionally, there are alternative provisions in 11 U.S.C. § 1325 and § 1322, all of which cannot be complied with in confirming one plan.

In looking at Debtor's Declaration, Dckt. 57, in addition to providing factual testimony of which he has personal knowledge (Fed. R. Evid. 601, 620), Debtor goes further providing his legal conclusions and legal testimony that:

- A. "I believe that the Plan has been proposed in good faith and not by any means forbidden by law" Dec., ¶ 9; Dckt. 57.

In this testimony under penalty of perjury, Debtor elects to dictate to the court the legal conclusion that he has proposed the plan in good faith, not providing testimony from which the court can make such legal conclusion. In addition, Debtor then testifies under penalty of perjury that he knows all of the laws relating to federal court proceedings and confirmation, to state his personal legal conclusion that the proposal of the Modified Chapter 13 Plan has not been "[b]y any means forbidden by law." There is no evidence presented by which the court can find that Debtor has such legal knowledge.

It is unfortunate that now, four-plus years in this case Debtor cannot prosecute a confirmation of a modified plan. Based on the grounds stated in the Motion, the court cannot confirm the modified plan.

Cause has been shown, the Motion to Dismiss is granted and the bankruptcy case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the Bankruptcy Case is dismissed.

12.	<a href="#"><u>21-23958</u></a> -E-13	<b>ISIDRO FLORES</b> <b>Peter Macaluso</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>12-28-21 <a href="#"><u>[24]</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 30, 2021. The court computes that 41 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00, due on December 27, 2021.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
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The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: First Installment Payment in the amount of \$79.00 due by December 27, 2021. Second Installment Payment in the amount of \$78.00 due by January 24, 2022.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

13. [19-27861-E-13](#)      **EUGENIA RAKESTRAW**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Seth Hanson**                      **1-12-22 [62]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Eugenia Ann Rakestraw ("Debtor"), is delinquent \$1,375.00 in Plan payments. Debtor's monthly payment is \$1,375.00, prior to hearing another payment of \$1,375.00 will come due. As a result Debtor will need to pay \$2,750.00 in order to bring this Plan current by the hearing date.
2. According to the Trustee's calculations Debtor's Plan will complete in 129 months as opposed to 60 months pursuant to the confirmed Plan.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 25, 2022. Dckt. 75. Debtor states she sent a payment via cashier's check on January 21, 2022 in the amount of \$1,375.00. Further, Debtor has corrected the over extension of her Plan by filing a Modified Plan, (Dckt. 66), to reduce the percentage paid to unsecured creditors from 100% to 25% to complete the terms of her plan within 60 months.

## FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 21, 2022. Dckt. 66. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 70, 72.

The Motion (Dckt. 70) states the reason for the default in the prior plan and the treatment of unsecured claims (reduction from 100% to 25% dividend, and payment of student loans outside the plan. However, grounds are not stated with particularity upon which the requested relief, confirmation of a modified plan, may be granted. The "grounds" stated in the Motion are the legal conclusion that the modified plan meets the requirements of 11 U.S.C. §§ 1322(a) -(c) and 1325. Motion, ¶ 9; Dckt. 70. These are not grounds, but "mere" legal conclusions. Additional, confirmation of a modified plan is governed by 11 U.S.C. § 1329, which incorporates multiple provisions (some inconsistent) of 11 U.S.C. §§ 1325 and 1322.

In Debtor's Declaration (Dckt. 72), Debtor appears to not be aware of the Modified Plan terms. This lack of knowledge is shown by being unaware of how creditors with secured claim are provided for in the Plan, stating that:

2. All secured creditors provided for have either accepted the Plan, or I have agreed to surrender the property securing their claims, or the Plan provides to pay the creditors pursuant to section 1324(a)(5)(B).

Declaration, ¶ 2

Cause has been established to Grant the Motion and dismiss the Chapter 13 case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted and the Bankruptcy Case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 10, 2022. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is <del>denied</del> without prejudice.</b></p>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Flora Elaine Broughton ("Debtor"), has failed to file an Amended Plan and set for confirmation. The Trustee and Bosco Credit LLC ("Creditor"), both objected to confirmation of the Debtor's original Plan and those objections were sustained by the Court on December 7, 2021. Dckt. 41 & 42.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 25, 2022. Dckt. 49. Debtor states a new Plan will be file don or before the hearing date for this.

## DISCUSSION

### Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 7, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

~~Unfortunately for Debtor, a promise to file an amended is not evidence that resolves the~~

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

———— **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

February 9, 2022 at 9:00 a.m.  
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hearing another payment of \$279.00 will come due. As a result Debtor will need to pay \$837.00, in order to bring this plan current by the date of the hearing.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 26, 2021. Dckt. 44. Debtor states she has cured the arrearages complained of through TFS payments made from her bank account on January 25 & 26, 2022. Counsel for Debtor has received a "screen shoot" showing the January 25, 2022 transfer in the amount of \$561.99 and understands remaining payment was made today, January 26, 2022. Additionally, Debtor consents to withdraw of the present motion by the Trustee without hearing. If the motion is not withdrawn Debtor would request either a continuance or scheduling order to allow evidence of the payments to be presented to the Court.

## DISCUSSION

### Delinquent

Debtor is \$558.00 delinquent in plan payments, which represents multiple months of the \$279.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

~~Based on the foregoing, cause exists to dismiss this case.~~

~~At the hearing the Trustee reported that the default has been cured and the Motion may be denied without prejudice.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 24, 2022. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----  
-----.

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Brandon Tyler Moore ("Debtor"), has failed to file an Amended Plan and set for confirmation. The Trustee and Toyota Motor Credit both objected to confirmation of the Debtor's original Plan, which both objections were sustained on December 7, 2021. Dckt. 24 & 27.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 26, 2022. Dckt. 38. Debtor states an Amended Chapter 13 Plan will be filed by the hearing date for this Motion. Debtor states he was unable to file an Amended Plan because a dispute regarding Claim 4 filed by Creditor Department of Treasury - Internal Revenue Service ("Creditor"). Debtor and Creditor have been in contact and the issue was resolved on January 20, 2022. Creditor filed an Amended Claim on January 20, 2022, reducing the amount of Claim 4 from \$41,627.79 to \$17,725.37.



## **DISCUSSION**

### **Prior Plan Denied, No New Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 7, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file an amended plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 25, 2022. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Catherine Ann Teel ("Debtor"), failed to appear and be examined at the First Meeting of Creditors held on January 20, 2022. The meeting has been continued to February 17, 2022 at 1:00 p.m.
2. Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition.
3. Debtor failed to provide the Trustee with a tax transcript or a copy of his/her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.
4. Trustee also points out that Debtor's first plan payment of \$5,604.22 was due the

same day this motion was filed, January 25, 2022.

## **DISCUSSION**

### **Failed to Appear at § 341 Meeting of Creditors**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Tax Returns**

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Jesse Soto Ortiz ("Debtor"), is delinquent \$24,207.70 in Plan payments. Debtor's monthly payment is \$8,082.34, prior to the hearing another payment of \$8,082.34 will come due. As a result Debtor will need to pay \$32,290.04, in order to bring this Plan current by the date of the hearing.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 26, 2022. Dckt. 186. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$24,207.70 delinquent in plan payments, which represents multiple months of the \$8,082.34 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

19. [17-23874-E-13](#)      **LAURA HILTON**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Matthew DeCaminada**      **1-12-22 [52]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Laura Hope Hilton (“Debtor”), is delinquent \$1,153.00 in Plan payments. Debtor’s monthly payment is \$305.00, prior to the

hearing another payment of \$305.00 will come due. As a result Debtor will need to pay \$1,458.00, in order to bring this Plan current by the date of the hearing.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 25, 2022. Dckt. 56. Debtor states she will file a modified Plan to cure the delinquency.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,153.00 delinquent in plan payments, which represents multiple months of the \$305.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is XXXXXXXXXXXXXXXXXX**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Timothy A. West and Rosa Meria West ("Debtor"), is delinquent in plan payments.
2. The Plan is overextended.

## **DEBTOR'S REPLY**

Debtor filed a Reply on October 6, 2021. Dckt. 64. Debtor states they will either file a new plan with the court or concede to dismissal.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,580.00 delinquent in plan payments, which represents multiple months of the \$1,860.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Material Default for Exceeding Sixty Months**

Debtor is in material default under the Plan because the Plan will complete in 69 months as opposed to 60 months pursuant to the confirmed Plan. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. The court's October 18, 2021 review of the Docket disclosed that no new plan or motion to confirm had been filed.

### **New Plan Denied**

On October 19, 2021, Debtor filed an Amended Plan. Dckt. 69. By court order, on November 24, 2021, that Plan was denied confirmation. Dckt. 79. There is no pending plan.

At the hearing, Debtor's counsel reported that Mr. West as been receiving Worker's Comp benefit, which has now gone to State Disability, which pays weekly.

Debtor's counsel reported that he is actively meeting with his clients and can document for the Trustee how Debtor will be able to make the regular plan payments.

The Trustee concurred with Debtor's request for a further continuance in light of the information provided by Debtor's counsel.

Since the January 11, 2022 hearing, no further documents or pleadings have been filed with the court.

### **February 9, 2022 Hearing**

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXX**.



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 21, 2022. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Diana Evans ("Debtor"), has filed six prior bankruptcy cases. Of those, all six were filed, and dismissed, in the last six years:

15-21350: Chapter 13 filed February 13, 2015, dismissed July 8, 2015 on Trustee's Motion to Dismiss for failure to appear at the 341, tax returns, and pay advices not provided, and failure to make payments.

15-27853: Chapter 13 filed October 17, 2015, dismissed January 22, 2016, on Trustee's Motions to Dismiss for failure to appear at the 341, tax returns, and pay advices not provided.

17-26013: Chapter 7 filed September 9, 2017, and dismissed on June 17, 2018, on behalf of Debtor's request.

19-24939: Chapter 13 filed August 6, 2019, dismissed January 16, 2020, for failing to appear at 341, pay advices not provided, tax returns not provided, delinquent Plan payments, and no Plan pending.

20-22996: Chapter 13 filed June 12, 2020, dismissed July 13, 2020, for failure to timely file documents.

21-20525: Chapter 13 filed February 16, 2021, dismissed March 1, 2021, for failure to timely file documents.

The Debtor has not explained why this case will work when the prior cases were not successful.

2. The Meeting of Creditors held on December 16, 2021 was continued to February 17, 2022 at 1:00 p.m. The Debtor was not examined due to computer issues that affected the video conference. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation.
3. The Debtor failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition.
4. The Debtor failed to provide the Trustee with a tax transcript or a copy of his/her Federal Income Tax Return with attachments for the most recent pre-petition tax year which a return was required, or a written statement that no such documentation exists.
5. The Debtor did not file the mandatory Chapter 13 Plan standard form as required by the Local Bankruptcy Rules.
6. The Debtor's case was filed on November 1, 2021, so the first Plan payment in the amount of \$800.00 is due on December 25, 2021. One additional payment due January 25, 2022 will also come due prior to the hearing.

#### **January 25, 2022 Hearing on Trustee's Objection to Confirmation of Plan**

On January 25, 2022, Debtor appeared at Trustee's and Creditor Deutsche Bank National Trust Company's Objections to Confirmation of Plan.

The court sustained Trustee's objection on the grounds that:

1. Debtor did not appear at the First 341 Meeting, however, the Meeting has been Continued to February 17, 2022, at 1:00 p.m.
2. Debtor has failed to provide the Trustee with adequate pay advices and tax returns.
3. Debtor failed to use the correct Chapter 13 Plan form.
4. Debtor failed to disclose six prior bankruptcy case.
5. Debtor has questionable information regarding the Debtor's estate: proper value of real property, expenses lower than average for a family of two, and failure to complete the Statement of Financial Affairs.

6. Debtor provides improper treatment of two different Creditors.

Civil Minutes, Dckt. 36.

Trustee's objections are the same grounds they are requesting dismissal based on.

The court sustained Creditor's objection on the grounds that:

1. Debtor fails to provide for a secured claim of \$479,607.00, including arrearage in the amount of \$181,891.79, by failing to estimate the amount on Schedule D.
2. Debtor may not be able to afford the Plan because Debtor will make \$800.00 monthly payments for 60 months with a monthly net income of an unknown amount.

Civil Minutes, Dckt. 35.

## DISCUSSION

### Undisclosed Bankruptcy Filings Within Prior Eight Years

Trustee reports that Debtor failed to disclose on the petition six prior bankruptcy cases. However, upon the Court's review, Debtor's Husband, Virgil Leroy Evans, has also filed multiple prior bankruptcy cases that have not been successfully prosecuted. Debtor and Debtor's husband's prior bankruptcy cases are listed below:

<b>Diane Evans</b>	<b>Virgil Leroy Evans</b>
<u>Case No.</u> 15-21350 <u>Date Filed:</u> February 13, 2015 <u>Chapter:</u> 13 <u>Date Dismissed:</u> July 8, 2015 <u>Reason for Dismissal:</u> Failure to appear at the 341, tax returns, and pay advices not provided, and failure to make payments.	
<u>Case No.</u> 15-27853 <u>Date Filed:</u> October 17, 2015 <u>Chapter:</u> 13 <u>Date Dismissed:</u> January 22, 2016 <u>Reason for Dismissal:</u> failure to appear at the 341, tax returns, and pay advices not provided.	

	<p><u>Case No.</u> 16-22447  <u>Date Filed:</u> April 18, 2016  <u>Chapter:</u> 13  <u>Date Dismissed:</u> August 2, 2016  <u>Reason for Dismissal:</u> on behalf of Debtor's request.</p>
	<p><u>Case No.</u> 17-23313  <u>Date Filed:</u> May 16, 2017  <u>Chapter:</u> 13  <u>Date Dismissed:</u> August 3, 2017  <u>Reason for Dismissal:</u> failure to appear at the 341, did not provide tax returns, pay advices, and Class 1 Checklist, and is delinquent in Plan payments.</p>
<p><u>Case No.</u> 17-26013  <u>Date Filed:</u> September 9, 2017  <u>Chapter:</u> 7  <u>Date Dismissed:</u> June 17, 2018  <u>Reason for Dismissal:</u> on behalf of Debtor's request</p>	
	<p><u>Case No.</u> 18-22102  <u>Date Filed:</u> April 7, 2018  <u>Chapter:</u> 13  <u>Date Dismissed:</u> October 11, 2018  <u>Reason for Dismissal:</u> delinquent in Plan payments and failed to file an Amended Plan.</p>
	<p><u>Case No.</u> 18-27708  <u>Date Filed:</u> December 12, 2018  <u>Chapter:</u> 13  <u>Date Dismissed:</u> February 21, 2019  <u>Reason for Dismissal:</u> failure to appear at 341, delinquent in Plan payments, and failed to set notice and confirmation</p>
	<p><u>Case No.</u> 19-21592  <u>Date Filed:</u> March 15, 2019  <u>Chapter:</u> 13  <u>Date Dismissed:</u> May 8, 2019  <u>Reason for Dismissal:</u> serial filer between him and his wife, Diana Evans. Case was Dismissed with Prejudice, based on <i>Leavitt v. Soto</i>, 171 F.3d 1219, 1224 (9<sup>th</sup> Cir. 1999) and the "totality of circumstances." Debtor received a 2 year bar from filing individually or jointly.</p>

<u>Case No.</u> 19-24939 <u>Date Filed:</u> August 6, 2019 <u>Chapter:</u> 13 <u>Date Dismissed:</u> January 16, 2020 <u>Reason for Dismissal:</u> failing to appear at 341, pay advices not provided, tax returns not provided, delinquent Plan payments, and no Plan pending.	
<u>Case No.</u> 20-22996 <u>Date Filed:</u> June 12, 2020 <u>Chapter:</u> 13 <u>Date Dismissed:</u> July 13, 2020 <u>Reason for Dismissal:</u> for failure to timely file documents	
<u>Case No.</u> 21-20525 <u>Date Filed:</u> February 16, 2021 <u>Chapter:</u> 13 <u>Date Dismissed:</u> March 1, 2021 <u>Reason for Dismissal:</u> for failure to timely file documents.	

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, p.3, Dckt. 1. Debtor reported filing, but did not report any case numbers, dates, or districts. Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor's] creditors have been wrongly hindered or delayed from enforcing their rights." *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at \*8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor's bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

### **Failed to Appear at § 341 Meeting of Creditors**

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Tax Returns**

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C.

§ 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Wrong Plan Form Used**

Debtor's Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Failure to file a plan on the current form is a delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Delinquency**

Trustee has not provided a status report as to whether Debtor is current on payments.

### **Substance of Cases Filed**

In the Plan filed in the current case, Debtor is to pay the Trustee \$600 a month in plan payments. Plan, ¶ 2.1; Dckt. 14. However, the Plan does not provide for paying any creditor claims. Debtor affirmatively states she has no creditors with secured claims (Plan, ¶¶ 3.1-3.5; *Id.*), no priority unsecured claims (*Id.*, ¶¶ 4.1-4.5), and no general unsecured claims (*Id.*, ¶¶ 5.1-5.3).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Yvonne Rose Richards ("Debtor"), is delinquent \$7,310.00 in Plan payments. Debtor's monthly payment is \$3,655.00, prior to the hearing another payment of \$3,655.00 will come due. As a result Debtor will need to pay \$10,965.00, in order to bring this Plan current by the date of the hearing.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on January 26, 2022. Dckt. 125. Counsel has filed a Motion to Withdraw as Attorney of Record and set the matter for hearing on February 15, 2022. Further on January 26, 2022, Counsel received the attached exhibit from the Debtor via e-mail. In light of this e-mail Counsel requests that the matter be continued to, or after February 15, 2022.

#### **DEBTOR'S EXHIBIT**

Debtor filed an Exhibit with Debtor's Response to Trustee's Motion to Dismiss, on January 26, 2022. Dckt. 126. The Exhibit is an e-mail from Debtor to Counsel explaining why Debtor is delinquent in Plan payments.

The e-mail states prior to the last modification Debtor's son, Michael, had been contributing greatly in helping with Debtor's payments. However, Michael has recently been involved in three car

accidents causing severe injuries and resulting in him losing his license and job. After the last modification Michael pulled a large sum out of his 401(k) to help Debtor make payments. Debtor was also able to rent out a room to make payments but unfortunately the renter passed away on October 1, 2021. Michael was able to obtain a job in Washington, however, that has since fallen through and Michael has returned home. Debtor's income is \$2,100.00 per month and even with help from, family friends, and her church, Debtor is still unable to make payments. Additionally, Debtor was recently in a car accident that totaled her Ford Focus listed in the bankruptcy. Due to a lapse in insurance payments Debtor does not have car insurance and cannot cover the loss of her vehicle. Debtor requests the Court to not dismiss her case because I have and will continue to attempt to make payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,310.00 delinquent in plan payments, which represents multiple months of the \$3,655.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay or file a modified plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 9, 2022. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$5.00 due on January 4, 2022.

**The Order to Show Cause is sustained, and the case is dismissed.**

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$5.00 due on January 4, 2022.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Tricia Tami Rojas ("Debtor"), is delinquent \$6,598.96 in Plan payments to the Trustee. The next schedule payment of \$3,299.48 is due on January 25, 2022, which is prior to this hearing. The Debtor has paid \$0.00 into the Plan to date.
2. The Trustee and Lakeview Loan Servicing, LLC, both objected to confirmation of the Debtor's original Plan. The objections were sustained at hearings held on December 14, 2021. Dckt. 41 & 42. The Debtor has failed to file an Amended Plan and set for confirmation.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 21, 2022. Dckt. 66. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **No Plan Payments Made**

Debtor did not commence making plan payments and is \$6,598.96 delinquent in plan

payments, which represents multiple months of the \$3,299.48 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

### **Prior Plan Denied, No New Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 14, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to file an Amended Plan is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtors, Harnider Singh Sandhu and Rajwinder Kaur (“Debtors”), are delinquent \$2,200.00 in Plan payments. Debtors’ monthly payment is \$1,100.00, prior to the hearing another payment of \$1,100.00 will come due. As a result Debtors will need to pay \$3,300.00, in order to bring this Plan current by the date of the hearing.

## **DEBTORS’ REPLY**

Debtors filed a Reply on January 27, 2022. Dckt. 35. Debtors states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtors are \$2,200.00 delinquent in plan payments, which represents multiple months of the \$1,100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtors, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

26. [18-25986-E-13](#)      **SHEILA AKPAN**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mikalah Liviakis**      **1-12-22 [27]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Sheila Shirley Akpan (“Debtor”), is delinquent \$1,576.00 in Plan payments. Debtor’s current monthly payment is \$788.00, prior to the hearing another payment of \$788.00 will come due. As a result Debtor will need to pay \$2,364.00, in order to bring this Plan current by

the hearing date.

2. The Debtor's Plan is over extended. According to the Trustee's calculations the Plan will complete in 74 months as opposed to 60 months pursuant to the confirmed Plan.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on January 26, 2022. Dckt. 31. Debtor has not yet committed to taking the necessary steps to potentially submit a meritorious opposition to the Trustee's Motion.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,576.00 delinquent in plan payments, which represents multiple months of the \$788.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Plan Term is More Than 60 Months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 74 months due to the Plan reflecting a commitment period of 60 months with 12.5% to unsecured creditors. Additionally, a total of 21 months remain under the confirmed Plan where Debtor will pay a total of \$16,548.00 (\$788.00 x 21). This amount, less Trustee fees of \$643.37, leaves \$15,902.63 available to pay creditors when \$25,839.60 is needed to pay priority and unsecured claims. Priority claims totaled \$25,121.52 where the Plan estimated \$8,500.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Sarah Wells ("Debtor"), is delinquent \$460.00 in Plan payments. Debtor's monthly payment is \$230.00, prior to the hearing another payment of \$230.00 will come due. As a result Debtor will need to pay \$690.00, in order to bring this Plan current by the date of the hearing.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on January 14, 2022. Dckt. 82. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$460.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

28.    [21-20592-E-13](#)            **CARRIE NOAH-GILLIAM**            **MOTION TO DISMISS CASE**  
         [DPC-2](#)                    **Patricia Wilson**                    **1-12-22 [49]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Carrie Lynn Noah-Gilliam (“Debtor”), is delinquent \$9,089.78 in plan payments. Debtor’s monthly payment is \$3,334.54, prior to the hearing another payment of \$3,334.52 will come due. As a result Debtor will need to pay \$12,424.30 in order to bring this plan



current by the date of the hearing.

## **DEBTOR'S ATTORNEY DECLARATION**

Attorney for Debtor filed a Declaration in response to Trustee's Motion to Dismiss filed on January 26, 2022. Dckt. 53. Attorney spoke with Debtor and Debtor states she is hoping to make the full payment by February 9, 2022.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,089.78 delinquent in plan payments, which represents multiple months of the \$3,334.52 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Michael Calvin Dickerman and Kindra Kay Dickerman ("Debtors"), are delinquent \$9,416.24 in plan payments. Debtors' monthly payment is \$3,474.54, prior to the hearing another payment of \$3,474.54 will come due. As a result Debtors will need to pay \$12,890.78, in order to bring this plan current by the date of the hearing.

## DISCUSSION

### Delinquent

Debtors are \$9,416.24 delinquent in plan payments, which represents multiple months of the \$3,474.54 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

30.	<a href="#"><u>21-20894</u></a> -E-13 <a href="#"><u>DPC-3</u></a>	ELISEI BRANDUSA Gary Fraley	MOTION TO DISMISS CASE 1-10-22 [ <a href="#"><u>72</u></a> ]
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 10, 2022. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Elisei Brandusa (“Debtor”), has failed to file an amended Plan since December 9, 2021, and to set it for confirmation. The Trustee objected to confirmation of the Debtor’s original Plan and the objection was sustained at hearing on July 20, 2021. Dckt. 16. The Debtor’s Motion to Confirm Amended Plan, (Dckt. 56), was denied by the Court on December 9, 2021. (Dckt. 71).

## **DISCUSSION**

### **Prior Plan Denied, No New Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 9, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

# FINAL RULINGS

31. [21-24109](#)-E-13      **HORACE SIMPSON**  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
12-22-21 [\[13\]](#)

**DEBTOR DISMISSED: 12/27/2021**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on December 24, 2021. The court computes that 47 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to Failure to Pay Fees.

<b>The Order to Show Cause is discharged as moot.</b>
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The court having dismissed this bankruptcy case by prior order filed on December 27, 2021 (Dckt. 15), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2021. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Ricardo Albert Romo and Adrienne Renee Romo (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$400.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

33. [19-26412](#)-E-13      **CONSTANCE HURDLE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mark Shmorgon**      **12-22-21 [19]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied without prejudice as moot, the case having been converted to one under Chapter 7 (Dckt. 33).**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Constance Hurdle’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on February 1, 2022, however, converting the case to a proceeding under Chapter 7. Dckt. 33. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on February 1, 2022. *McFadden*, 37 B.R. at 521.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the Bankruptcy Case having been converted to one under Chapter 7 (Dckt. 33).and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice as moot.

34. [21-23014-E-13](#) **KYLE FARRIS / GRACIELA** **MOTION TO DISMISS CASE**  
[DPC-2](#) **JARAMILLO-FARRIS** **12-22-21 [40]**  
**Mikalih Liviakis**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Kyle Andrew Farris and Graciela Jaramillo-Farris (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on January 26, 2022. Dckt. 44. Debtor states they are filing a new plan and motion to confirm to address their delinquency and bring their payments current. Response, Dckt. 44.



## DEBTOR'S PENDING MODIFIED PLAN

Debtor filed a Modified Plan on January 28, 2022. Dckt. 50. The hearing for confirmation of Debtor's Modified Plan is on April 19, 2022 at 2:00 p.m. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 46, 48. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. Fed. R. Evid. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

35.	<a href="#"><u>21-23915</u></a> -E-13	<b>LINDA GERMANY</b> <b>Mikalah Liviakis</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>12-22-21 [14]</b>
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**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 24, 2021. The court computes that 47 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on December 17, 2021.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

36.	<a href="#"><u>17-23018-E-13</u></a> <a href="#"><u>DPC-6</u></a>	<b>JEFFREY/RHIANNON CLEMENT Thomas Amberg</b>	<b>MOTION TO DISMISS CASE 12-22-21 <a href="#"><u>[99]</u></a></b>
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**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2022. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is denied without prejudice.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtors, Jeffrey Eugene Clement and Rhiannon Marie Clement ("Debtor"), is delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on January 19, 2022. Dckt. 103. Debtor states they are in the midst

of preparing a modified plan, under which they will be current, and that their modified plan will be on file before the hearing of the present motion. Response, Dckt. 103.

## **DEBTOR'S PENDING MODIFIED PLAN**

Debtor filed a Third Modified Plan on January 21, 2022. Dckt. 109. The hearing for confirmation of Debtor's Third Modified Plan is set for March 15, 2022 at 2:00 p.m. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 105, 107. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602. <sup>Fn.1.</sup>

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FN. 1. With respect to the Rule 9013 pleading requirement, the Motion to Confirm the Modified Plan is borderline. What a number of consumer attorneys had done to comply with Rule 9013 in a consumer practice economic basis is to have a motion to confirm (whether original plan or modified plan) that states the statutory requirements of 11 U.S.C. §§ 1325 and 1322, plus 11 U.S.C. § 1329 if it is a modified plan, that state the requirements to confirmation of the plan. Counsel then edits the basic statutory requirements, deleting those not applicable, and providing any embellishments to those applicable as appropriate. This allows for compliance with the Federal Rules of Bankruptcy Procedure and not require a unique motion each time.  
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Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 10, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Donna Louise Heischober (“Debtor”), failed to file an amended plan to set for confirmation.
2. Debtor has still not amended Form 122C or Schedule J, despite previous objections from Trustee. Objection to Confirmation, Dckt. 23.

## DISCUSSION

### Prior Plan Denied, No New Plan Filed

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on November 23, 2021. Dckt. 35. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11

**Failure to File Amended Documents Related to Petition**

Trustee filed a Motion to Dismiss based on Debtor's failure to file:

- A. Schedule J,
- B. Form 122c.

Without Debtor submitting the required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Robert Aurther DeCelle, III and Donna Marie DeCelle (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on January 24, 2022. Dckt. 176. Debtor states they have met with Counsel and will file a new plan on or before the date of hearing on this matter. Opposition, Dckt. 176.

#### **FILING OF SECOND MODIFIED PLAN**

Debtor filed a Second Modified Plan and Motion to Confirm on February 1, 2022. Dckt. 181. The court has reviewed the Motion to Confirm the Second Modified Plan and the Declaration in support filed by Debtor. Dckts. 179, 182. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

39.    [19-26830-E-13](#)        **ROBERT/ADRIANE MCGEE**        **MOTION TO DISMISS CASE**  
         [DPC-1](#)                **Seth Hanson**                    **12-22-21 [20]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 2, 2022, Dckt. 27; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Robert James McGee and Adriane Lynn McGee (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 27, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall

proceed in this court.

40. [21-23930](#)-E-13      JEANIE REAM  
40 thru 41              Steele Lanphier

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-28-21 [\[28\]](#)**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 30, 2021. The court computes that 41 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$86.00, due on December 20, 2021, has not been paid.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.



**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 26, 2022. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$84.00 due on January 18, 2022.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Teodulfo Tembrevilla DeLa Cruz and Annalyn Rojo DeLa Cruz (“Debtors”), are delinquent in plan payments.

## **DEBTORS’ OPPOSITION**

Debtors filed an Opposition on January 20, 2022. Dckt. 35. Debtors state a modified plan will be filed prior to the hearing date.

## **FILING OF MODIFIED PLAN**

Debtors filed a Modified Plan and Motion to Confirm on January 31, 2022. Dckt. 42 and 38, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 38, 40. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

43.     [19-22933-E-13](#)     **MATTHEW RUBB**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)           **Steele Lanphier**       **12-22-21 [82]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1.       the debtor, Matthew Kent Rubb (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

Debtor is \$7,200.00 delinquent in plan payments, which represents multiple months of the \$650.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

44. [20-23834-E-13](#) **CHRISTINE BONILLA** **MOTION TO DISMISS CASE**  
[DPC-3](#) **Peter Macaluso** **12-22-21 [70]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Christine Bonilla (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

Debtor is \$17,490.00 delinquent in plan payments, which represents multiple months of the \$4,235.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case

is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

45. [21-23134](#)-E-13      **MICHAEL/CAROLINE PANOPIO**      **ORDER TO SHOW CAUSE - FAILURE**  
Eric Schwab      **TO PAY FEES**  
1-4-22 [[69](#)]

**DEBTOR DISMISSED: 1/10/2022**  
**JOINT DEBTOR DISMISSED:**  
**1/10/2022**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 6, 2022. The court computes that 34 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the Final Installment Payment in the amount of \$80.00 due by December 30, 2021.

<b>The Order to Show Cause is discharged as moot.</b>
---

The court having dismissed this bankruptcy case by prior order filed on January 10, 2022 (Dckt. 72), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered, this Bankruptcy Case having been dismissed by prior order of the court.

46. [21-21036-E-13](#)      **JEFFREY/YELENA MAYHEW**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Peter Macaluso**                      **12-22-21 [74]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew (“Debtor”), are delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on January 20, 2022. Dckt. 78. Debtor states they will file a modified plan prior to the hearing date.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on January 31, 2022. Dckts. 85 and 81, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 81, 83. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

47. [20-24738-E-13](#)      **ANTHONY/LISSETTE BIANCHI**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Dale Orthner**                      **12-22-21 [41]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Anthony William Bianchi and Lissette Carmen Bianchi (“Debtors”), are delinquent in plan payments.

## DISCUSSION

Debtors are \$1,176.00 delinquent in plan payments, which represents multiple months of the \$168.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.



**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 10, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Marlon San Antonio Valenzuela and Michelle Gumobao Valenzuela (“Debtors”), failed to file an amended plan and set for confirmation.

## DISCUSSION

Debtors did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtors’ prior plan on November 23, 2021. A review of the docket shows that Debtors have not yet filed a new plan or a motion to confirm a plan. Debtors offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

49. [20-23445-E-13](#)      **DEMETRIUS BELLAMY**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **George Burke**      **12-22-21 [64]**

**Final Ruling: No appearance at the February 9, 2022 hearing is required.**

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 22, 2022. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Demetrius Bellamy (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

Debtor is \$6,601.92 delinquent in plan payments, which represents multiple months of the \$3,300.96 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

50. [21-21745-E-13](#)      **MICHAEL/CAROL STANFORD**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      Gary Fraley                      1-3-22 [\[65\]](#)

**Final Ruling: No appearance at the February 9, 2022 hearing is required.**

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 3, 2022. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is denied without prejudice.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Michael Roland Stanford and Carol Ann Stanford (“Debtors”), are delinquent in plan payments.
2. debtors failed to file an amended plan and set for confirmation.

#### **DEBTORS’ OPPOSITION**

Debtors filed an Objection on January 27, 2022. Dckt. 69. Debtors state they have paid \$7,475.99 toward the delinquency and will pay another \$7,324.01 on January 31, 2022. The Debtors further state that after the payments are made, payments will proceed as set forth in the Second Amended Chapter 13 plan.

#### **FILING OF AMENDED PLAN**

Debtors filed an Amended Plan and Motion to Confirm on January 27, 2022. Dckt. 73 and 70, respectively. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 72. The Motion appears (marginally) to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtors appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 23, 2021. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on December 10, 2021.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

**DEBTOR DISMISSED: 1/10/2022**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 8, 2022. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the final installment fee of \$78.00, due on January 4, 2022.

<p><b>The Order to Show Cause is discharged as moot.</b></p>
--

The court having dismissed this bankruptcy case by prior order filed on January 10, 2022 (Dckt. 65), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the bankruptcy case having been dismissed by prior order of the court, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

**DEBTOR DISMISSED: 01/10/2022**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.  
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<p><b>The case having previously been dismissed, the Motion is dismissed as moot.</b></p>
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The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Elysha Noelle Lopez (“Debtor”), is delinquent \$7,997.94 in Plan payments. Debtor’s monthly payment is \$3,365.90, prior to the hearing another payment of \$3,365.90 will come due. As a result debtor will need to pay \$11,363.84, in order to bring this plan current by the date of the hearing.

## DISCUSSION

### Delinquent

Debtor is \$7,997.94 delinquent in plan payments, which represents multiple months of the \$3,365.90 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon



review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

55. [21-22968](#)-E-13      **BOUALY XIONG**  
   **Candace Brooks**  
**DEBTOR DISMISSED: 1/10/2022**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-28-21 [\[33\]](#)**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 30, 2021. The court computes that 41 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fees in the amount of \$78.00 due December 20, 2021.

<p><b>The Order to Show Cause is discharged as moot.</b></p>
--

The court having dismissed this bankruptcy case by prior order filed on January 10, 2022 (Dckt. 36), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Frank Bernie Randle (“Debtor”), is delinquent \$6,452.70 in Plan payments. Debtor’s monthly payment is \$3,207.27, prior to the hearing another payment of \$3,207.27 will come due. As a result Debtor will need to pay \$9,659.97, in order to bring this Plan current by the date of the hearing.

## DISCUSSION

### Delinquent

Debtor is \$6,452.70 delinquent in plan payments, which represents multiple months of the \$3,207.27 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13

Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

57. [20-24371-E-13](#) **PAUL CHUNGLO** **MOTION TO DISMISS CASE**  
[DPC-1](#) **George Burke** **1-12-22 [21]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Paul Edward Chunglo (“Debtor”), is delinquent \$3,600.00 in Plan payments. Debtor’s monthly payment is \$1,200.00, prior to the hearing another payment of \$1,200.00 will come due. As a result Debtor will need to pay \$4,800.00, in order to bring this plan current by the date of the hearing.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,600.00 delinquent in plan payments, which represents multiple months of the \$1,200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case

is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

58.    [20-23172-E-13](#)        **SONDA CHARLTON**                                **MOTION TO DISMISS CASE**  
         [DPC-2](#)                        **Peter Macaluso**                                **1-12-22 [56]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is denied without prejudice</b>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Sonda L. Charlton (“Debtor”), is delinquent \$5,153.28 in Plan payments. Debtor’s monthly payment is \$1,812.30, prior to the hearing another payment of \$1,812.30 will come due. As a result Debtor will need to pay \$6,965.58, in order to bring this Plan current by the date of the hearing.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on January 25, 2022. Dckt. 60. Debtor states the delinquency will be cured prior to the hearing date.

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on January 31, 2022. Dckt. 67. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 63, 65. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 12, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Richard A. Acosta and Stephanie Marie Acosta ("Debtors"), plan is overextended. The Trustee calculates the Plan will complete in 213 months as opposed to 60 months pursuant to the confirmed Plan.

## **DISCUSSION**

### **Plan Term is More Than 60 Months**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 213 months due to the Plan reflecting a commitment period of 60 months with 0% to unsecured creditors. Additionally, a total of 36 months remain under the confirmed Plan where Debtor will pay a total of \$14,112.00 (\$392.00 x 36). This amount, less Trustee fees of \$550.36, leaves \$13,561.64 available to pay creditors when \$57,302.02 is needed to pay priority and secured claims and remaining attorney's fees. Lastly, the confirmed Plan required a \$34,876.00 secured claim of Kia Motors, (Claim 11), to be paid to Trustee, but in the prior amended Plan this claim was being paid directly by the Debtors. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Richey Deanne Harrison (“Debtor”), is delinquent \$4,956.00 in Plan payments. Debtor’s monthly payment is \$2,915.60, prior to the hearing another payment of \$2,915.60 will come due. As a result Debtor will need to pay \$7,871.60, in order to bring this plan current by the date of the hearing.

## DISCUSSION

### Delinquent

Debtor is \$4,956.00 delinquent in plan payments, which represents multiple months of the \$2,915.60 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13



Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

61. [19-20393-E-13](#)      **PAULINO/DENA MACHADO**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Thomas Amberg**                      **1-12-22 [40]**

**Final Ruling:** No appearance at the February 9, 2022 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 12, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Dismiss is granted and the case is dismissed.</b></p>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtors, Paulino Azevedo Machado and Dena Michelle Machado (“Debtors”), are delinquent \$6,156.37 in Plan payments. Debtors’ monthly payment is \$4,939.09, prior to the hearing another payment of \$4,939.09 will come due. As a result Debtors will need to pay \$11,095.46, in order to bring this Plan current by the date of the hearing.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on January 19, 2022. Dckt. 44. Debtor states the delinquency will be cured prior to the hearing date.

#### **FILING OF A MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on January 21, 2022. Dckt. 48. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by

The Motion does not state grounds with particularity, Federal Rule of Bankruptcy Procedure 9013 requirement, upon which the relief, confirmation of the Modified Plan, may be granted. The grounds stated in the Motion to Confirm makes several factual allegations, but if all are taken as true, they would not satisfy the requirements to confirm a modified plan as Congress has established in 11 U.S.C. §§ 1329, 1325, and 1322.

Based upon the Motion to Dismiss and the grounds stated in the Motion to Confirm, cause exists to dismiss this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted and the Bankruptcy Case is dismissed.